

110TH CONGRESS
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H. RES. 1028

Reasserting congressional prerogatives in foreign policy and reaffirming the importance of following constitutional processes when the United States Government enters into agreements regarding the use or maintenance of the United States Armed Forces or the use of the financial resources of the United States to assist a foreign government or people and clarifying the nature and scope of status of forces agreements.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2008

Ms. LEE (for herself, Ms. WOOLSEY, Ms. WATERS, and Mr. FILNER) submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Reasserting congressional prerogatives in foreign policy and reaffirming the importance of following constitutional processes when the United States Government enters into agreements regarding the use or maintenance of the United States Armed Forces or the use of the financial resources of the United States to assist a foreign government or people and clarifying the nature and scope of status of forces agreements.

Whereas the Framers of the Constitution of the United States intended that all significant foreign commitments by the United States Government be made by treaty or statute and that only routine, essentially nonpolitical for-

eign engagements be left to the sole discretion of the executive branch;

Whereas the President is Commander in Chief of the Army and the Navy of the United States and of the militia of the several states when called into service;

Whereas the Constitution of the United States also gives the President the power to receive Ambassadors and other public ministers and the duty to ensure that the laws are faithfully executed;

Whereas the Constitution of the United States gives Congress the power to declare war, to raise and support armies, to provide and maintain a navy, to make rules governing such forces, to provide for organizing and calling forth the militia, to make rules concerning captures on land and water, and to regulate commerce with foreign nations;

Whereas the Constitution of the United States also gives Congress the power to make all laws necessary for carrying out the powers vested in the Government, and the power to raise and spend money;

Whereas the Framers of the Constitution of the United States recognized that for the protection of the Republic the United States Armed Forces must never be independent of civil authority and vested in Congress the authority to “raise and support Armies, but no Appropriation for that Use shall be for a longer Term than two Years”;

Whereas, in addition, the Senate has the responsibility of confirming appointments to diplomatic posts and by two-thirds vote must give its advice and consent to treaties before such treaties become effective;

Whereas to believe that the functions of Congress are to simply approve what the President does in foreign affairs, blindly appropriate funds for requests made by the President without question or challenge, or give automatic consent and support to whatever foreign policy course the executive branch formulates involves a profound misreading of the Constitution of the United States;

Whereas, despite having the Constitution of the United States as a road map and compass, the United States has witnessed a disturbing trend toward unchecked presidential supremacy in the formulation and conduct of the foreign policy of the United States, especially in the aftermath of World War II and the Cold War and the steady ascendancy of the United States as a global superpower;

Whereas, at times, emboldened Presidents from both political parties have transgressed constitutional boundaries by committing the United States to foreign conflicts and financial burdens, with such Presidents claiming expediently that the survival of the United States and Western civilization itself are at stake;

Whereas, in 2008, the United States has more than 700 military bases and outposts in 130 foreign countries and the United States Department of Defense reports that the United States Armed Forces are currently deployed in more locations than ever before in the history of the United States;

Whereas there is an increasingly dangerous complacency in Congress and among the people of the United States who have been led to believe that the sheer size, complexity, and reach of the United States foreign policy means that only the President and his advisors are capable of formu-

lating and executing the foreign policy of the United States in the accelerated 21st century;

Whereas the 2001 terrorist attacks in the United States, the foreign policy response of the Bush-Cheney administration to such attacks, and the ensuing misnamed, mischaracterized, and open-ended “global war on terrorism” risk concentrating unwarranted power in the executive branch and threaten the ingenious system of separation of powers established by the Framers of the Constitution of the United States;

Whereas, Congress, established in Article I of the Constitution of the United States, is a co-equal branch of the Government, and each Member of Congress, regardless of political party, must resist encroachment by the executive branch on the constitutional prerogatives of Congress;

Whereas, in the most recent example of executive branch overreaching, and without congressional consultation or input, on November 26, 2007, United States President George W. Bush and Iraqi Prime Minister Nouri al-Maliki signed the “U.S.-Iraq Declaration of Principles for Friendship and Cooperation”, a shared statement of intent that established common principles to frame the future relationship between the United States and Iraq;

Whereas President Bush has publicly stated that the relationship envisioned in the “U.S.-Iraq Declaration of Principles for Friendship and Cooperation” includes cooperation between the United States and Iraq in the political, diplomatic, economic, and security arenas;

Whereas President Bush has declared his intent, during 2008, to negotiate and conclude detailed arrangements, without any role for Congress, that will codify the bilat-

eral relationship between the United States and Iraq following the expiration of the mandate of the Multi-National Force—Iraq under Chapter VII of the United Nations Charter and the concomitant resumption of Iraq’s normal status as a state with full legal and functional sovereignty and authorities and the restoration of Iraq’s legal international status;

Whereas status of forces agreements (SOFAs) typically deal with routine administrative and legal issues such as the protection of United States military personnel from foreign jurisdiction, proceedings, and imprisonment, issues necessary for day-to-day business such as entry and exit of personal belongings, postal and banking services, and exemption of certain covered persons from civil and criminal jurisdiction, taxation, customs duties, immigration law, and similar laws of a foreign jurisdiction;

Whereas the “Status of Forces Policies, Procedures, and Information” of the Department of the Army and the Department of the Navy, issued on December 15, 1989, makes clear that the North Atlantic Treaty Organization SOFA is the benchmark for defining a “standard” or “typical” SOFA agreement because “the same procedures for safeguarding the interests of U.S. personnel subject to foreign jurisdiction will be applied, insofar as practicable, to all foreign countries”;

Whereas SOFAs customarily do not include any guarantee to defend a host country against external or internal threats; and

Whereas SOFAs customarily do not include a provision for immunity from host country laws for private military contractors not acting in direct support of the United States Armed Forces: Now, therefore, be it

1 *Resolved*, That it is the sense of the House of Rep-
2 representatives that—

3 (1) any agreement, understanding, or commit-
4 ment, other than a treaty, entered into by the Presi-
5 dent or his designee, whether characterized or de-
6 nominated as a status of forces agreement or other-
7 wise, which purports to impose a binding or enforce-
8 able obligation on the United States to use or main-
9 tain the United States Armed Forces to assist a for-
10 eign country, government, or people, either imme-
11 diately or upon the happening of certain events,
12 should be approved by an Act of Congress;

13 (2) any agreement, other than a treaty, between
14 the United States and another country that requires
15 the use of the financial resources of the United
16 States should be approved by an Act of Congress;
17 and

18 (3) any agreement, other than a treaty, between
19 the Republic of Iraq and the United States that im-
20 poses upon the United States burdens in excess of
21 those customarily included in a status of forces
22 agreement should likewise have no legal effect if
23 such agreement has not been approved by an Act of
24 Congress.

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